

Remarks

Applicant respectfully requests reconsideration. Claims 1-32 are pending for examination. No amendments to the claims have been made and no new matter has been added.

Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 1-4 and 6-32 under 35 U.S.C. § 102(b) as anticipated by the Daw et al. reference or the France et al reference. Applicant respectfully traverses the rejection.

The Examiner stated on page 4 of the Office Action that the cell culture surface disclosed by the Daw and France references is “inherently capable of implanting.” Applicant respectfully disagrees with the Examiner’s conclusion of inherency underlying the rejection.

First, as noted by the Examiner on page 3 of the Office Action, the objects treated in the Daw and France references are a “foil, or tissue culture wells or dishes” that “can be used for cell culture”. A foil, or tissue culture wells or tissue culture dishes clearly are not biocompatible; more specifically, they are not inherently capable of implanting as asserted by the Examiner.

Second, the Daw and France references disclose attachment and growth of cells on plasma polymerized surfaces. However, these references do not disclose the attachment, growth and detachment of cells, which is a feature of a therapeutic vehicle used in tissue engineering.

Applicant also notes that claim 32 discloses specific therapeutic vehicles (a prosthesis, an implant, a matrix, a stent, a gauze, a bandage, a plaster, a biodegradable matrix, a polymeric film), which are not taught by the Daw and France references. In fact, the Examiner has not asserted that the Daw and France references teach the additional elements recited in claim 32. Therefore, on this basis alone, claim 32 should be found allowable.

Accordingly, Applicant respectfully requests that the rejection of the claims under 35 U.S.C. § 102(b), as anticipated by the Daw et al. reference or the France et al reference, be withdrawn.

Rejections Under 35 U.S.C. §103

The Examiner rejected claim 5 as unpatentable over Daw et al. or France et al. in view of Yanagihara et al (US patent 4,693,799). Applicant respectfully traverses the rejection.

As noted above in connection with the anticipation rejection, neither the Daw reference nor the France reference describe the elements of the claimed invention. The combination of the Yanagihara patent with either Daw or France also does not describe the elements of the claimed invention.

Further, one of ordinary skill in the art would not look to the Yanagihara patent to supply the elements missing from the Daw or France references, because Yanagihara is directed to providing a plasma polymerized film to improve lubricity of sliding surfaces, such as video heads, magnetic tapes and magnetic discs (see Background of the Invention section).

As noted above, neither Daw nor France provides therapeutic vehicles that are biocompatible. In addition, the vehicles that are disclosed in Daw and France are not inherently capable of implanting. Likewise, Yanagihara describes nothing about therapeutic vehicles for use in tissue engineering.

Thus, one of ordinary skill in the art would not be motivated to modify the teachings of the Daw or France references (which themselves are lacking elements of the claimed invention) by the teachings of Yanagihara.

Accordingly, Applicant respectfully requests that the rejection of claim 5 under 35 U.S.C. 103 be withdrawn.

Double Patenting Rejections

The Examiner provisionally rejected claim 5 as unpatentable over co-pending application US 10/111,155 under the judicially created doctrine of obviousness-type double patenting. The Examiner applies the Daw, France and Yanagihara references in combination with the co-pending application.

As noted above, copending application US 10/111,155 is directed to different and non-obvious subject matter as compared to the present claims. As also noted above, the Daw, France and Yanagihara references do not teach elements of the claimed invention. Further, it would not have been obvious to modify the teachings of the copending application US 10/111,155 based on the Daw, France and Yanagihara references in order to obtain the claimed invention.

Accordingly, Applicant respectfully requests that the provisional double patenting rejection of claim 5 be withdrawn.

CONCLUSION

In view of the foregoing remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
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